



## SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2012-0076]

Individuals with Certain Criminal Convictions as Representative Payees

AGENCY: Social Security Administration.

ACTION: Notice; Request for Comments.

SUMMARY: We are requesting information from the public regarding whether we should prohibit persons who have been convicted of certain crimes from serving as representative payees under titles II, VIII, and XVI of the Social Security Act (Act). We are seeking this information in order to determine the best way to protect our beneficiaries from persons whose criminal history indicates they may pose an increased risk of abuse or exploitation of vulnerable individuals.

DATES: To ensure that your comments are considered, we must receive them no later than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA-2012-0076 so that we may associate your comments with the correct document.

CAUTION: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. Internet: We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at <http://www.regulations.gov>. Use the Search function to find docket number SSA-2012-0076. The system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. Fax: Fax comments to (410) 966-2830.

3. Mail: Address your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401.

Comments are available for public viewing on the Federal eRulemaking portal at <http://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Gina Clemons, Office of Retirement and Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD

21235-6401, (410) 966-9897. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

#### SUPPLEMENTARY INFORMATION:

##### Background

A person who receives benefits from us may be unable to manage those benefits for reasons such as his or her young age or mental or physical impairment. In these cases, we select a representative payee if we believe that representative payment, rather than direct payment of benefits, will serve the beneficiary's interest. Generally, we appoint a representative payee if we determine that the beneficiary is not able to manage or direct the management of benefit payments in his or her interest. The representative payee may be an organization or a person, such as a parent, relative, or friend of the beneficiary. We require the representative payee to use the money in the beneficiary's best interest and to report the expenditures to us to ensure that the representative payee is using the funds appropriately. Our policies on appointing representative payees and their use of benefits are designed to protect the beneficiaries' interests.

When a person or an organization requests to serve as a representative payee, we investigate the potential representative payee to help ensure that the person or organization will perform the duties of a representative payee responsibly and in the beneficiary's best interests. When we investigate, we look at factors such as the potential representative payee's relationship

to the beneficiary, any past performance as a representative payee for other beneficiaries, and any criminal history the potential representative payee may have.

The Act prohibits certain groups of persons from serving as representative payees due to their criminal history. For example, the Act prohibits from serving as representative payees persons convicted of Social Security fraud<sup>1</sup> and persons who are fleeing to avoid prosecution, or custody or confinement after conviction, of a felony, or an attempt to commit a felony.<sup>2</sup> In other cases, the Act gives us discretion to determine whether it would be appropriate to appoint someone as a representative payee despite his or her criminal history. The Act provides that we may not certify payment of benefits to a person as a representative payee if that person has been convicted of an offense under Federal or State law that results in imprisonment for more than 1 year, “unless the Commissioner determines that such certification would be appropriate notwithstanding such conviction.”<sup>3</sup>

Over 5.5 million of our beneficiaries have a representative payee.<sup>4</sup> Most representative payees serve beneficiaries appropriately. Given the sheer size of our representative payment program, however, we occasionally find that a representative payee has used his or her position

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<sup>1</sup>Sections 205(j)(2)(B)(i)(III), 205(j)(2)(C)(i)(I), 807(d)(1)(A), 1631(a)(2)(B)(ii)(III), and 1631(a)(2)(B)(iii)(I) of the Act, 42 U.S.C. 405(j)(2)(B)(i)(III), 405(j)(2)(C)(i)(I), 1007(d)(1)(A), 1383(a)(2)(B)(ii)(III), and 1383(a)(2)(B)(iii)(I).

<sup>2</sup>Sections 205(j)(2)(C)(i)(V), 807(d)(1)(E), and 1631(a)(2)(B)(iii)(V) of the Act, 42 U.S.C. 405(j)(2)(C)(i)(V), 1007(d)(1)(E), and 1383(a)(2)(B)(iii)(V).

<sup>3</sup>Sections 205 (j)(2)(B)(i)(IV), 205(j)(2)(C)(i)(IV), 807(d)(1)(D), 1631(a)(2)(B)(ii)(IV), and 1631(a)(2)(B)(iii)(IV) of the Act, 42 U.S.C. 405(j)(2)(B)(i)(IV), 405(j)(2)(C)(i)(IV), 1007(d)(1)(D), 1383(a)(2)(B)(ii)(IV), and 1383(a)(2)(B)(iii)(IV).

<sup>4</sup>Social Security Administration, Annual Statistical Supplement, 2012, Table 5.L.1 (available at: <http://www.socialsecurity.gov/policy/docs/statcomps/supplement/2012/51.html>).

of trust to take advantage of beneficiaries. Over the last several years, we have become aware of several situations in which representative payees took advantage of beneficiaries. For example, one organizational representative payee mistreated several intellectually disabled men for whom it served both as representative payee and employer. Inspectors from the State of Iowa, acting on a complaint, found that the organization kept the men in sub-standard housing and committed a number of violations of the Iowa Code with respect to the men's pay. The state brought charges against the organization, including failure to provide minimum wage, failure to provide pay stubs, and making illegal deductions. The United States Equal Employment Opportunity Commission also brought an action against the organization under the American with Disabilities Act, alleging that the organization denied the workers lawful wages, subjected them to abusive verbal and physical harassment, restricted their freedom of movement, required them to live in deplorable and sub-standard living conditions, and failed to provide adequate medical care.

In another case, law enforcement officials in Philadelphia have charged a representative payee with holding captive and abusing several vulnerable beneficiaries over a period of years as part of a scheme to steal their Social Security benefits and Supplemental Security Income payments. As we learned of the criminal proceedings in this case, we also learned that this person had been convicted of murder more than 20 years ago.

We take the well-being of our beneficiaries very seriously. As Congress intended, when we evaluate a potential representative payee, we carefully consider the applicant's criminal history, even when it does not fall within the categories that result in a prohibition under the Act from serving as a representative payee. If a potential representative payee has a criminal history that does not result in a prohibition under the Act, we do not appoint that person unless we find a

compelling reason to do so after we weigh the person's criminal history, his or her relationship to the beneficiary, custody of the beneficiary, and other factors. We have a number of procedures designed to prevent the appointment of representative payees who might take advantage of beneficiaries, as well as to discover situations in which representative payees act inappropriately. We also take quick action when we become aware of situations where representative payees are not acting appropriately.

Congress amended the Act to provide that we may prohibit a person from serving as a representative payee if that person has been convicted of an offense under Federal or State law that results in imprisonment for more than 1 year because it believed the provision would decrease the likelihood of mismanagement or abuse of beneficiaries' funds and help ensure that we act as an appropriate steward of taxpayer funds.<sup>5</sup> As part of our commitment to further Congress' intent and protect beneficiaries, we began a pilot in our Philadelphia region in June 2012. In this pilot, we bar potential representative payees who have been convicted of certain crimes involving violence or theft from serving as a representative payee. We also remove that person as a representative payee if he or she is already serving another beneficiary. We ask about an applicant's criminal history during the representative payee interview process, and we review information we have regarding criminal convictions. Under this pilot, we do not choose an applicant to be a payee if he or she has been convicted under Federal or State law for: 1) human trafficking; 2) false imprisonment; 3) kidnapping, rape or other sexual offense requiring registration as a sex offender; 4) first degree murder; 5) robbery; 6) fraud to obtain government assistance; 7) fraud by scheme; 8) theft of government funds or property; 9) abuse; 10) neglect;

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<sup>5</sup> S. Rep. No. 108-176, at 10 (2003); H.R. Rep. No. 108-46, at 30 (2003).

11) forgery; or 12) identity theft. We also bar a representative payee applicant who has been convicted of an attempt to commit any of these crimes or conspiracy in connection with any of these crimes.

We designed the pilot as a means to utilize our scarce administrative resources efficiently. Under the procedures in our pilot, we ask an applicant to be a representative payee about his or her criminal history during the representative payee interview process. To date, we only use information from our systems or self-reporting to obtain information about the applicant's criminal history, but we intend to use public information to conduct a criminal background check of the applicant. If we find that the person has been convicted of one of the specified crimes, we would not select the person to be a representative payee, and we would remove that person as representative payee if he or she already serves as a representative payee for another beneficiary.

In our pilot, we do not apply this bar if the applicant is the custodial parent, custodial spouse, or custodial court-appointed legal guardian of the beneficiary for whom the applicant is applying to serve as representative payee. In our experience, custodial parents and spouses generally serve appropriately as representative payees for their children and spouses. Under the pilot, if a potential representative payee who is the custodial parent or custodial spouse of the beneficiary has one of the specified criminal convictions, we weigh various factors, including the potential representative payee's criminal history and his or her relationship to and custody of the beneficiary, before we decide whether to appoint the person as representative payee.

Given the serious nature of the crimes we specify, we believe it would be appropriate to apply the prohibition regardless of how far in the past the crime or the conviction for the crime took place. We would not, of course, apply this bar if the representative payee applicant provides satisfactory evidence that his or her conviction has been overturned on appeal, or that he or she has been granted a full or absolute pardon by the President of the United States or appropriate state authority.

#### Request for Comments

We ask for your comments about whether we should prohibit persons who have been convicted of certain crimes from serving as a representative payee. We ask that, in preparing comments, you address questions such as:

- 1) Should we apply the prohibition to a representative payee applicant who is the custodial parent or custodial spouse of the beneficiary?
- 2) Are the crimes that we have identified appropriate ones to which to apply the prohibition? Are there other crimes to which we should apply the prohibition?
- 3) If you believe that the crimes that we have identified should not result in a prohibition from serving as a representative payee, how would you further Congress' intent that we decrease the likelihood of mismanagement or abuse of beneficiaries' funds and ensure that we act as an appropriate steward of taxpayer funds?



- 4) Should we apply the prohibition regardless of how far in the past the crime or the conviction for the crime took place?
- 5) Are there any additional groups to whom the prohibition should or should not apply?
- 6) If you have ever served as a representative payee, would a “bar” policy have discouraged you from applying to be a payee? If you have never served as a representative payee, do you believe that a “bar” policy will discourage individuals from applying to be a payee? If so, please explain how you believe you would have been discouraged, or other individuals will be discouraged, from applying to be a representative payee.

Please see the information under “ADDRESSES” earlier in this document for methods to give us your comments. We will not respond to your comments, but we will consider them as we review our policies and instructions to determine if we should revise or update them.

Dated: February 1, 2013.

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Michael J. Astrue,  
Commissioner of Social Security

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